

AGREEMENT

THIS AGREEMENT dated this 9th day of December, 2003, by and between LEON COUNTY, a political subdivision of the State of Florida, hereinafter referred to as the "County" and STRUCTURAL PRESERVATION SYSTEMS, hereinafter referred to as the "Contractor."

WHEREAS, the County has determined that it would be in the best interest of the citizens of Leon County, Florida, that the County be able to utilize the services of private persons when such services cannot be reasonably provided by the County; and

WHEREAS, the County has determined that it would be better to contract for these services than to hire the necessary personnel to satisfy the needs of the County; and

WHEREAS, in order to secure the lowest cost for these services, the County has sought and received competitive bids from contractor for such services.

NOW, THEREFORE, the parties hereto agree as follows:

1. SERVICES TO BE PROVIDED

The Contractor hereby agrees to provide the services outlined in the Contractor's Proposal No. 300311-12292 dated November 5, 2003 excluding the General Conditions contained in Attachment A thereto, such document shall be incorporated herein and made a part hereof as Exhibit 1. All work shall be in accordance with the Design Criteria Package and specifications for Leon County Bid No. BC-08-28-03-57, said documents being incorporated into this agreement as if fully set out herein.

2. WORK

Any work to be performed shall be upon the written request in the form of a Notice to Proceed issued by the County Administrator or his designee, which request shall set forth the commencing date of such work and the time within which such work shall be completed.

The performance of Leon County of any of its obligations under this agreement shall be subject to and contingent upon the availability of funds lawfully expendable for the purposes of this agreement for the current and any future periods provided for within the bid specifications.

3. TIME

The work to be performed under this agreement shall be commenced within fourteen (14) days of any such Notice to Proceed. All work to be performed under this agreement shall be completed within sixty (60) consecutive calendar days of the Notice to Proceed. If the work to be performed under this agreement is not completed within the time set forth above, or within such extra time as may be granted by the County, the Contractor shall be deemed to be in default.

Permitting the Contractor to continue and finish the work or any part of it after the expiration of the time allowed herein, including extensions, if any, shall in no way act as a waiver on the part of County to any the liquidated damages due under this agreement contract.

4. CONTRACT SUM

The Contractor agrees that for the satisfactory performance of the services as outlined above in Section 1, Services to Be Provided, it shall be remunerated by the County a base fee of \$60,000 plus \$1,237.50 per additional petrograph above those in the base proposal.

5. PAYMENTS

The County will make such payments within thirty (30) days of submission and approval of invoice for services.

6. STATUS

The contractor at all times relevant to this Agreement shall be an independent contractor and in no event shall the Contractor nor any employees or sub-contractors under it be considered to be employees of Leon County.

7. INSURANCE

Contractor shall procure and maintain for the duration of the contract, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees, or subcontractors. The cost of such insurance shall be included in the Contractor's bid.

1. Minimum Limits of Insurance

Contractor shall maintain limits no less than:

- a. General Liability: \$1,000,000 Combined Single Limit for bodily injury and property damage per occurrence with a \$2,000,000 annual aggregate. Completed operations coverage will be provided for a period of three (3) years beyond termination and/or completion of the project. Coverage must include bodily injury and property damage, including Premise/Operations: a per location aggregate, Broad Form Contractual liability; Broad Form Property Damage; Fire Legal liability; Independent Contractors coverage; Cross Liability & Severability of Interest Clauses; and Personal Injury (deleting employee and contractual exclusions), and coverage for explosion, collapse, and underground (X,C,U).
- b. Automobile Liability: One Million and 00/100 (\$1,000,000.00) Dollars combined single limit per accident for bodily injury and property damage. *(Non-owned, Hired Car)*.
- c. Workers' Compensation Employers Liability: Insurance covering all employees meeting Statutory Limits in compliance with the applicable state and federal laws and Employer's Liability with a limit of \$500,000 per accident, \$500,000 disease policy limit, \$500,000 disease each employee. ***Waiver of Subrogation in lieu of Additional Insured is required.***
- d. Professional Liability Insurance, including errors and omissions: for all services provided under the terms of this agreement with minimum limits of One Million and 00/100 (\$1,000,000.00) Dollars per occurrence; or claims made form with "tail coverage" extending four (4) years beyond the term of the agreement. Proof of "tail coverage" must be submitted with the invoice for final payment. In lieu of "tail coverage", Contractor may submit annually to the County a current Certificate of Insurance proving claims made insurance remains in force throughout the same four (4)-year period.
- e. Umbrella: \$5,000,000 combined single limit for bodily injury and property damage combined per occurrence and annual aggregate. The coverage shall provide excess coverage for employer's liability, general liability, including completed operations and auto liability.
- f. Installation Floater: In the amount of the estimated cost of materials necessary to complete the contract. Should include temporary location, job site, and in transit coverage.
- g. Mobile Equipment (Contractors Equipment) coverage should be in place while job is in process. Equipment should be covered whether owned, leased, borrowed, or rented by contractor or by employees of the contractor.

2. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the County. At the option of the County, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the County, its officers, officials, employees and volunteers; or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

3. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

a. General Liability and Automobile Liability Coverages (***County is to be named as Additional Insured***).

1. The County, its officers, officials, employees and volunteers are to be covered as additional insureds as respects; liability arising out of activities performed by or on behalf of the Contractor, including the insured's general supervision of the Contractor; products and completed operations of the Contractor; premises owned, occupied or used by the Contractor; or automobiles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protections afforded the County, its officers, officials, employees or volunteers.
2. The Contractor's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees and volunteers. Any insurance of self-insurance maintained by the County, its officers, officials, employees or volunteers shall be excess of the Contractor's insurance and shall not contribute with it. Contractor hereby waives subrogation rights for loss or damage against the county.
3. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the county, its officers, officials, employees or volunteers.
4. The Contractor's insurance shall apply separately to each insured against whom claims is made or suit is brought, except with respect to the limits of the insurer's liability.
5. Companies issuing the insurance policy, or policies, shall have no recourse against the County for payment of premiums or assessments for any deductibles with are all at the sole responsibility and risk of Contractor.

b. All Coverages

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the County.

4. Acceptability of Insurers

Insurance is to be placed with insurers with a Best's rating of no less than A:VII.

5. Verification of Coverage

Contractor shall furnish the County with certificates of insurance and with original endorsements effecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements are to be received and approved by the County before work commences. The County reserves the right to require complete, certified copies of all required insurance policies at any time.

6. Subcontractors

Contractors shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

8. PERMITS

The County shall pay for all necessary permits as required by law.

9. LICENSES

The Contractor shall be responsible for obtaining and maintaining his city or county occupational license and any licenses required pursuant to the laws of Leon County, the City of Tallahassee, or the State of Florida. Should the Contractor, by reason of revocation, failure to renew, or any other reason, fail to maintain his license to operate, the contractor shall be in default as of the date such license is lost.

10. ASSIGNMENTS

This Contract shall not be assigned or sublet as a whole or in part without the written consent of the County nor shall the contractor assign any monies due or to become due to him hereunder without the previous written consent of the County.

11. HOLD HARMLESS

The Contractor agrees to indemnify and hold harmless the County, its officers, officials and employees from and against any and all claims, damages, liabilities, or suits of any nature whatsoever arising out of, because of, or due to any of the services provided for in this agreement by the Contractor, its delegates, agents or employees, or due to any act or occurrence of omission or commission of the Contractor, its delegates, agents or employees, including but not limited to costs and a reasonable attorney's fee. The County may, at its sole option, defend itself or allow the Contractor to provide the defense. The Contractor acknowledges that ten dollars (\$10.00) of the amount paid to the Contractor is sufficient consideration for the Contractor's indemnification of the County.

12. MINORITY BUSINESS ENTERPRISE (M/WBE) PARTICIPATION

The Contractor shall meet or exceed the M/WBE participation levels stated in the M/WBE Participation Statement included as part of the bid response for this project, except when the County Good Faith Committee approves an exception.

Any "Good Faith Statement" provided by a Contractor shall follow the requirements of the Florida Statutes, and must demonstrate through documentation that every reasonable effort has been made to achieve the requested percentage.

For those M/WBE firms listed in their bid, Contractors shall be responsible for securing proof of their M/WBE certification and providing copies to the County M/WBE Office.

Also required is a monthly reporting system of the work done by and payments made to certified minority business enterprises as a part of this project. The reports shall detail each invoice submitted to the County and a break down of payments to all subcontractors therein by M/WBE classification.

13. AUDITS, RECORDS, AND RECORDS RETENTION

The Contractor agrees:

- a. To establish and maintain books, records, and documents (including electronic storage media) in accordance with generally accepted accounting procedures and practices, which sufficiently and properly reflect all revenues and expenditures of funds provided by the County under this contract.
- b. To retain all client records, financial records, supporting documents, statistical records, and any other documents (including electronic storage media) pertinent to this contract for a period of five (5) years after termination of the contract, or if an audit has been initiated and audit findings have not been resolved at the end of five (5) years, the records shall be retained until resolution of the audit findings or any litigation which may be based on the terms of this contract.
- c. Upon completion or termination of the contract and at the request of the County, the Contractor will cooperate with the County to facilitate the duplication and transfer of any said records or documents during the required retention period as specified in paragraph 1 above.
- d. To assure that these records shall be subject at all reasonable times to inspection, review, or audit by Federal, state, or other personnel duly authorized by the County.
- e. Persons duly authorized by the County and Federal auditors, pursuant to 45 CFR, Part 92.36(l)(10), shall have full access to and the right to examine any of provider's contract and related records and documents, regardless of the form in which kept, at all reasonable times for as long as records are retained.
- f. To include these aforementioned audit and record keeping requirements in all approved subcontracts and assignments.

14. MONITORING

To permit persons duly authorized by the County to inspect any records, papers, documents, facilities, goods, and services of the provider which are relevant to this contract, and interview any clients and employees of the provider to assure the County of satisfactory performance of the terms and conditions of this contract.

Following such evaluation, the County will deliver to the provider a written report of its findings and will include written recommendations with regard to the provider's performance of the terms and conditions of this contract. The provider will correct all noted deficiencies identified by the County within the specified period of time set forth in the recommendations. The provider's failure to correct noted deficiencies may, at the sole and exclusive discretion of the County, result in any one or any combination of the following: (1) the provider being deemed in breach or default of this contract; (2) the withholding of payments to the provider by the County; and (3) the termination of this contract for cause.

15. TERMINATION

Leon County may terminate this Agreement without cause, by giving the Contractor thirty (30) days

written notice of termination. Either party may terminate this Agreement for cause by giving the other party hereto thirty (30) days written notice of termination. The County shall not be required to give Contractor such thirty (30) day written notice if, in the opinion of the County, the Contractor is unable to perform its obligations hereunder, or if in the County's opinion, the services being provided are not satisfactory. In such case, the County may immediately terminate the Agreement by mailing a notice of termination to the Contractor.

16. PUBLIC ENTITY CRIMES STATEMENT

In accordance with Section 287.133, Florida Statutes, Contractor hereby certifies that to the best of his knowledge and belief neither Contractor nor his affiliates has been convicted of a public entity crime. Contractor and his affiliates shall provide the County with a completed public entity crime statement form no later than January 15 of each year this agreement is in effect. Violation of this section by the Contractor shall be grounds for cancellation of this agreement by Leon County.

17. PROHIBITION AGAINST CONTINGENT FEES

The Contractor warrants that he or she has not employed or retained any company or person, other than a bona fide employee working solely for the Contractor to solicit or secure this agreement and that he or she has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working for the architect any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this agreement.

18. NON-WAIVER

Failure to enforce or insist upon compliance with any of the terms or conditions of this Agreement or failure to give notice or declare this Agreement terminated shall not constitute a general waiver or relinquishment of the same, or of any other terms, conditions or acts; but the same shall be and remain at all times in full force and effect.

19. REVISIONS

In any case where, in fulfilling the requirements of this contract or of any guarantee, embraced in or required thereby it is necessary for the Contractor to deviate from the requirements of the bid, Contractor shall obtain the prior written consent of the County.

20. CONSTRUCTION

The validity, construction, and effect of this Contract shall be governed by the laws of the State of Florida.

21. VENUE

Venue of all actions arising under this Agreement shall lie in Leon County, Florida.

WHERETO, the parties have set their hands and seals effective the date whereon the last party executives this Agreement.

CONTRACTOR

WITNESS: _____ BY: _____
President

WITNESS: _____ DATE _____

(CORPORATE SEAL)

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 20____.

By _____, of _____
(Name of officer or agent, title of officer or agent) (Name of corporation acknowledging)

a _____ corporation, on behalf of the corporation.
(State or place of incorporation)

He/she is personally known to me or has produced _____ as
identification. (type of identification)

Signature of Notary

Print, Type or Stamp Name of Notary

Title or Rank

Serial Number, If Any

LEON COUNTY, FLORIDA

Attachment # 1
Page 8 of 14

BY: _____
Jane G. Sauls, Chairman
Board of County Commissioners

DATE: _____

ATTEST:
BOB INZER, CLERK OF THE COURT
LEON COUNTY, FLORIDA

By: _____

APPROVED AS TO FORM:
LEON COUNTY ATTORNEY'S OFFICE

By: _____
Herbert W.A. Thiele, Esq.
County Attorney



Florida Branch
3000 SW 10th Street
Pompano Beach, FL 33069
Phone 954-984-9555
Fax 954-984-9559
www.structural.net

Proposal No. 300311-12292
November 5, 2003

Mr. Tom Brantley
Director, Facilities and Construction
Leon County, FL
1907 South Monroe Street
Tallahassee, FL 32301

Re: Leon County Courthouse Garage - Condition Assessment Program

Dear Mr. Brantley:

We propose to furnish all necessary labor, material, equipment, and supervision, except as noted below, to perform the following items of work:

- Perform the following tests to access the condition of the garage in preparation for the design work:
 - Extract concrete cores from four locations on each level of the garage. Test the cores for compressive strength and report this information to the Design/Build Team and the Owner.
 - Extract concrete cores from four locations on each level of the garage. Perform petrographic analysis of the cores and report this information to the Design/Build Team and the Owner. Note – we have provided an Alternate to do one petrograph from each level and if consistent with each other, no other petrographs will be performed. If inconsistent, additional petrographs will be performed at unit prices. We suggest utilizing this Alternate for cost savings.
 - Extract concrete cores from four locations on each level of the garage. Profile the cores (take three readings at three different levels) for chloride ion content and report this information to the Design/Build Team and the Owner.
 - Extract concrete cores from four locations on each level of the garage. Profile the cores (take three readings at three different levels) for carbonation and report this information to the Design/Build Team and the Owner.
 - Utilize subsurface interface radar (SIR), also known as ground penetrating radar (GPR), at approximately eighteen locations on each level to locate and determine cover thickness of existing reinforcing steel. Six locations will be at the drive lanes, six locations at the columns, and six locations at the ramp on each level. We may use drilling or manual demolition at select areas to confirm and/or calibrate the results of the SIR survey. Report this information to the Design/Build Team and the Owner.
- All core holes will be filled with high-early strength concrete.

Proposal No. 300311-12292
Facilities and Construction - Leon County, FL
November 5, 2003
Page 2 of 3

WORKING CONDITIONS:

1. Evening work hours 6:00 p.m. - 2:30 a.m.
2. Five (5) day week MTWTF

SUPPORT BY OTHERS (at no cost to SPS) SHALL INCLUDE THE FOLLOWING:

1. 110V electric
2. Potable water
3. Lighting
4. Parking for service vehicles
5. Unobstructed access to work areas

SCHEDULE:

Work could commence within fourteen (14) days of written notice to proceed. Fieldwork will be complete within fifteen (15) working days. Results of some testing will be available immediately while other results will take up to four (4) weeks after fieldwork is complete.

PRICE:

All work shall be paid for in accordance with the previously stated quantities and the following schedule of values:

Lump Sum	\$74,850.00	(This cost is included in the Design/Build Contract we are negotiating)
Alternate	\$60,000.00	(Unit price for additional petrographs are \$1,237.50 each)

PAYMENT TERMS:

An invoice shall be submitted upon completion and is payable within fifteen (15) days from date of invoice. One and one-half percent (1.5%) interest per month due on unpaid balance after fifteen (15) days. Please note - this may be revised by the Design/Build Contract we are negotiating.

GENERAL CONDITIONS:

See Attachment "A". Please note - this may be revised by the Design/Build Contract we are negotiating.

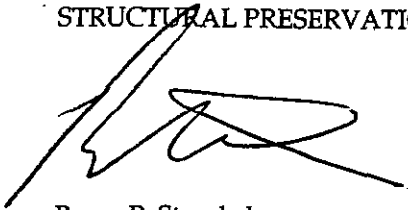
EXPIRATION:

This proposal may be withdrawn if not accepted by December 9, 2003.

Proposal No. 300311-12292
Facilities and Construction - Leon County, FL
November 5, 2003
Page 3 of 3

Sincerely,

STRUCTURAL PRESERVATIONS SYSTEMS, INC.



Bruce P. Stoerkel
Branch Manager

ACCEPTANCE OF PROPOSAL:

The above Conditions, Specifications, Prices and General Conditions are hereby accepted. You are authorized to proceed to do this work and payment will be as stated above.

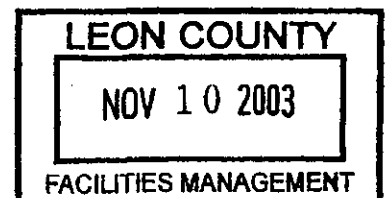
ACCEPTED BY:

Authorized Signature

Title

Date

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ATTACHMENT "A" - GENERAL CONDITIONS

Attachment # 1
Page 12 of 14

1. Commencement of Work:

- 1.1. Acceptance of this Proposal shall be acceptance of all terms and conditions, recited herein or incorporated by reference. Client's issuance of a Notice to Proceed or a Letter of Intent shall constitute acceptance by Client of this Proposal and corresponding General Conditions.
- 1.2. After acceptance of this Proposal, and unless otherwise stated, SPS shall be given a reasonable time in which to make delivery of materials or labor to commence and complete its performance.
- 1.3. Client is required to prepare all work areas so as to be accessible and acceptable for SPS' work. SPS will not be called upon to commence work until sufficient areas are ready to allow logical, continued and efficient progress of work until completion.

2. Form of Agreement

- 2.1. If an alternative form of contract or subcontract is to be used, then such form shall be the current unmodified AIA Standard Form Contract Document A101 or unmodified Subcontract Document A401.

3. Permits:

- 3.1. Client will provide all necessary permits, fees, and inspections for the contracted work unless otherwise provided herein.

4. Bonds & Insurance:

- 4.1. The cost of bonds are not included in this proposal unless otherwise provided herein. Should Performance & Payment bonds be required, Client shall be responsible for all associated bond premiums. In addition, certain information is required by Client to satisfy SPS' bonding company underwriting requirements including but not limited to confirmation of project funding. SPS shall furnish said bonds only on standard AIA A-312 bond forms.
- 4.2. SPS shall furnish evidence of insurance in the form of a standard ACORD Certificate of Insurance. Such Insurance Certificate shall include the Client as Certificate Holder and shall provide evidence of the coverages and corresponding limits as follows: Workers' Compensation - Statutory, Employer's Liability - \$500K, General Liability - \$1M per occurrence / \$2M general aggregate, Auto Liability - \$1M and Excess Liability - \$10M. Any other insurance required of SPS is not included and shall be furnished at Client's sole cost at SPS' discretion.

5. Payment:

- 5.1. Payment by Client for SPS' performance is not, under any circumstances, subject to any contingencies or conditions precedent or subsequent other than SPS' performance pursuant to this proposal.
- 5.2. All sums not paid when due shall bear interest at the rate of 1 1/2% per month from due date until paid or the maximum legal rate permitted by law, whichever is less, plus all costs of collection, including reasonable attorneys' fees.
- 5.3. Payment is a material issue. If payment is not made to SPS as herein provided, then SPS may stop work with three (3) days written notice to client without prejudice to any other remedy it may have including the right to file a lien, claim, or notice thereof on its behalf.
- 5.4. Client shall not be entitled to withhold payments on account of third party general liability claims if the liability for such claim(s) has been accepted by SPS' insurer.
- 5.5. No back charges or claims shall be valid unless agreed to in writing by SPS. Client shall only be entitled to withhold payment from SPS if, and for so long as SPS fails to perform any of its obligations hereunder or otherwise is in default under any of the Contract Documents; provided Client forwards written notice to SPS of intent to withhold payment and affords SPS five (5) business days to mitigate same. Any such holdback shall be limited to an amount sufficient to cure any such default or failure of performance by SPS and any undisputed work items shall be paid in accordance with the contract provisions.

6. Prosecution of the Work

- 6.1. Client agrees to furnish fresh water, electricity and staging area (and plant site) for SPS' operation as well as drawings showing locations of all services, utility lines and underground structures unless specifically provided for otherwise herein.
- 6.2. Work called for herein is to be performed during SPS' regular working hours. Overtime rates will be charged for all work performed outside such hours unless the cause giving rise to having to work overtime is a result of SPS caused delays.

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- 6.3. SPS shall perform the work in a diligent manner and without interruptions (weather permitting). SPS shall be entitled to extensions of time for weather delays. In addition, should adverse weather conditions prohibit SPS from properly applying specified products, including but not limited to waterproofing membranes, deck coatings, and expansion joints per manufacturer's specifications, then the contract time shall be extended accordingly.
- 6.4. SPS shall not be responsible for delays caused by the Client, Owner, a General Contractor, other contractors or subcontractors, Architect, Engineers, armed conflict or economic dislocation resulting therefrom; embargoes of labor, raw materials, production facilities or transportation; labor difficulties, civil disorders of any kind; action of civil or military authorities; vendor priorities and allocations, fires, floods, accidents and acts of God.
- 6.5. SPS' liability for delay damages shall be limited to liquidated damages in an amount mutually agreed upon by SPS and Client and in no event shall SPS be liable for actual, punitive, indirect, incidental or consequential damages of any kind. Conversely, should SPS be delayed in any manner by the acts, errors, or omissions of the Client, Engineer, or by an employee of either of them, then, in addition to any applicable extension of time, SPS shall be entitled to receive from them compensation for any reasonable damages caused by the delay.

7. Changes

- 7.1. A Change Order is a written instrument prepared by SPS and signed by the Client, SPS and Engineer (if applicable) stating agreement of 1) a change in the work; 2) the amount of adjustment, if any, in the contract sum; and 3) the extent of the adjustment, if any, in the contract time.
- 7.2. Information used has been provided to SPS by the Client, representatives of Client or others. If conditions are not in accordance with the information furnished, the recommended procedures and scope of work of this proposal may not necessarily apply. The responsibility for delays, liabilities and expenses due to conditions other than represented to SPS is not assumed by SPS but is assumed by the Client. All expenses incurred by SPS due to conditions other than as represented shall be paid to SPS including overhead and profit.

8. Hazardous Materials:

- 8.1. Client warrants that a reasonable effort has been made to inform SPS of known or suspected hazardous materials on the project site. Any hazardous waste uncovered during construction shall be the sole responsibility of the Client, including but not limited to the ultimate disposal of any samples secured by SPS, which are found to be contaminated.
- 8.2. SPS and Client agree that the discovery of unanticipated hazardous materials constitutes a changed condition, and may mandate a re-negotiation of the scope of work and compensation for additional costs incurred or other measures including decontamination of SPS' equipment and/or termination of services. SPS and Client also agree that the discovery of unanticipated hazardous materials may make it necessary for SPS to take immediate measures to protect the health and safety of employees.
- 8.3. Notwithstanding any other provision of the Agreement, Client waives any claim against SPS with respect to the provisions of Article 8 contained herein and, to the maximum extent permitted by law, agrees to defend, indemnify, and save SPS harmless from any claim, liability, and/or defense costs for injury or loss arising from SPS' discovery of unanticipated hazardous materials or suspected hazardous materials including any costs created by delay of the project and any cost associated with the possible reduction of the property's value.
- 8.4. SPS agrees to notify Client when unanticipated hazardous materials or suspected hazardous materials are encountered. Client agrees to make any disclosures required by law to the appropriate governing agencies. Client recognizes that it is the Client's responsibility to inform the property owner of the discovery of unanticipated hazardous materials or suspected hazardous materials, in the event the project site is not owned by Client. Client also agrees to defend, indemnify, and hold SPS harmless for any and all consequences relating to disclosures made by SPS, which are required by governing law.

9. Standard of Care:

- 9.1. SPS will strive to perform services under this Agreement in a manner consistent with the level of care and skill ordinarily exercised by Structural Preservation Systems, Inc or industry standards, whichever is higher.

10. Termination by Contractor:

- 10.1. SPS may terminate the contract if the work is stopped for a period of thirty (30) days through no act or fault of SPS, a subcontractor or anyone directly or indirectly employed by them or anyone for whose acts they may be liable for the following reasons: 1) issuance of a court order or other public authority to stop work, 2) an act of government which requires work to be stopped, 3) because Engineer has not issued a Certificate of Payment and has not notified SPS of reason for withholding certification or because Client has not made payment on a Certificate of Payment within the time stated within the contract.

11. Warranty:

11.1. SPS warrants to the Client that the work described herein will be free from defects in material and workmanship and will conform to the specifications / contract documents as herein set forth. If within the warranty periods specified, SPS receives from the Client prompt written notice that the material or workmanship does not meet such warranties, SPS shall thereupon commence to cure, within a reasonable amount of time, each such defect including nonconformance with the specifications, weather permitting. In no event shall SPS' liability to warrant materials exceed the standard warranties provided by each respective supplier or manufacturer. The total liability of SPS to Client whether under warranty, contract, negligence or otherwise, shall not in any case exceed the cost of correcting defects in the material or workmanship as herein provided and upon the expiration of said warranty, all such liability shall terminate. THERE ARE NO OTHER REMEDIES, LIABILITIES (INCLUDING NEGLIGENCE) OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE APPLICABLE TO THE MATERIAL AND/OR SERVICES. SPS' sole responsibility and Client's exclusive remedy hereunder, shall be limited to such repair or replacement as above provided.

12. Liability:

- 12.1. Liability or damages associated with water leakage shall be the responsibility of the Client unless caused by SPS' sole negligence.
- 12.2. Client shall be responsible for any and all property damage and/or bodily injuries (including but not limited to injuries to SPS' employees) that result from damage to interior and/or exterior underground/overhead/surface mounted/embedded utilities or structures unless caused by SPS' sole negligence.
- 12.3. SPS shall not in any event be liable to any party for claims of any kind related to asbestos, lead paint, EFIS or mold.
- 12.4. Whether attributable to contract, warranty, tort (including negligence), strict liability or otherwise, SPS' responsibility for any claims, damages, losses or liabilities arising out of or related to its performance of this contract, including but not limited to any correction of defects under the Warranty, shall not exceed the contract price. In no event shall Contractor be liable for any special, indirect, incidental, consequential, or punitive damages of any character, including but not limited to damages claimed for loss of use of productive facilities or equipment, lost profits, governmental fines or penalties, lost production, or non-operation or increased expense of operation, irrespective of whether claims or actions for such damages are based upon contract, warranty, negligence, strict liability or otherwise

13. Indemnification:

- 13.1. To the fullest extent permitted by law, the SPS shall indemnify and hold harmless the Client, Engineer and employees of either of them from and against claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by negligent acts or omissions of the SPS, a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, except as otherwise provided in Item 12 above.

14. Dispute Resolution & Governing Law:

- 14.1. All claims, disputes, and other matters and questions arising out of, or relating to this Contract or any breach thereof, which cannot be resolved through negotiation, shall be submitted to either mediation or arbitration before and as a condition precedent to any other remedy.
- 14.2. This contract shall be governed by the law of the place where the project is located.

15. Miscellaneous:

- 15.1. Should any of the Conditions of the Agreement be void for any reason, only such void portions shall be inapplicable; the remaining Conditions or portions thereof shall have full force and effect.
- 15.2. This Agreement and any previous or subsequent agreement between SPS and Client is not intended to inure to the benefit of any party other than Client; provided, however, that obligations imposed upon Client shall bind its successors, assigns, sureties, insurers, officers, principals and heirs.
- 15.3. No assignment hereunder is allowed without written approval of SPS.

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